



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

July 5, 2017

*From the desk of
Rep. Jodi Hack
Jodi Hack*

Representative Jodi Hack
900 Court Street NE H385
Salem OR 97301

Re: House Bill 3458-B Undue Hardship Period Notice and Consent Requirements

Dear Representative Hack:

You asked for an opinion regarding requirements in the B-engrossed House Bill 3458 regarding the undue hardship period exemption, including the employer's notice to the Bureau of Labor and Industries (BOLI) and the employee's consent.

Under HB 3458-B, an employer that processes perishable products may be eligible for an exemption from the 55-hour employee workweek maximum during an undue hardship period. An undue hardship period is the period of time during which a perishable product must be processed before it spoils or otherwise deteriorates beyond use.¹ An employer is eligible for an undue hardship period exemption if the employer (1) notifies BOLI of the undue hardship period and (2) obtains consent to work more than 55 hours per week from each employee who will work more than 55 hours in any given week during the undue hardship period.² Both the notice to BOLI and the employee's consent must be in forms prescribed by BOLI.

The employer must submit the notice of the undue hardship period directly to BOLI. The notice must include the start and expected end dates of the undue hardship period.³ The employer is eligible for more than one undue hardship period exemption in a given calendar year; however, the combined total of the employer's undue hardship periods in a given calendar year may not exceed 21 workweeks.⁴ Nothing in HB 3458-B requires the employer to submit separate notices for each undue hardship period and it is likely that BOLI will address this issue when it develops the notice form. Whether the employer submits one or more notices of undue hardship periods, the employer must indicate the expected start and end dates of each undue hardship period and the total of those periods cannot exceed 21 workweeks in a given calendar year. Therefore, an employer may choose to submit separate notices for each undue hardship period to ensure that the estimated dates of the undue hardship periods are as accurate as possible.

The employer is not required to submit the employee's consent to BOLI; however, in the event of an investigation, the employer may be required to produce copies of employee consent.

¹ HB 3458-B, section 2 (1)(e).

² HB 3458-B, section 2 (4) and section 9 (5).

³ *Id.*

⁴ *Id.*